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EXAMINER

SHAH, AMEE A

ART UNIT	PAPER NUMBER
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3625

NOTIFICATION DATE	DELIVERY MODE
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10/16/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/750,163	Applicant(s) HARDING ET AL.	
	Examiner AMEE A. SHAH	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-11 and 33-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-11 and 33-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 3-11 and 33-70 are pending in this action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 34, 35, 46 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 34, 35, 46 and 47 depend from claims 3 and 7 and all recite “wherein the threshold is settable...” However, claims 3 and 7 define two different thresholds – an availability threshold and a predetermined score threshold. It is not clear to one of ordinary skill in the art to which threshold these claims are referring, or if a different, third threshold is being considered. For purposes of this action only, the examiner will interpret the claims as either threshold being settable.

Claims 40, 52 and 66 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 40, 52 and 66 recite the limitation of “providing a first plurality of ordering controls...” It is not clear to one of ordinary skill in the art what is meant by this limitation, i.e. is there a second plurality of controls, or is there the one and only first plurality? For purposes of this action only, the examiner will interpret the limitation as a plurality of ordering controls.

Art Unit: 3625

Claims 43, 44, 55-57, 69 and 70 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: obtaining a shipping time and determining a fastest shipping time. For purposes of this action only, the examiner will interpret the claims as having the necessary steps.

Claims 45, 55 and 57 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 45, 55 and 57 are directed to the method of claim 7 further comprising certain steps. However, claim 7 is directed to a computing system. It is not clear to one of ordinary skill in the art whether the claims are directed to the method of claim 1 or the system of claim 7 with further configured to perform the functions. For purposes of this action only, the examiner will interpret claims 45, 55 and 57 as being directed to the method of claim 3.

Claim Rejections - 35 U.S.C. § 101

35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7-11, 46-54 and 56 are rejected under 35 U.S.C. §101 because the claimed inventions are directed to non-statutory subject matter.

Claims 7, 46-54 and 56 are directed to a system that can be comprised solely of software, i.e. disembodied data structures which are per se not statutory. Claims 8-11 are directed to a computer readable medium defining data structure, but do not specify whether the structures are

executable by a computer or processor to perform certain functions/steps. Thus, claims 7-11, 46-54 and 56 are directed to disembodied data structures which are per se not statutory. *C.f. In re Wamerdam*. The limitations are directed to data, such as content for displaying, etc. which all represent a data structure resembling a data file without reciting any functional changes due to an application program and resulting in an useful, concrete and tangible result. Functional descriptive material, in combination with a computer readable medium must be capable of producing a useful, concrete and tangible result when used in a computer system is statutory i.e., a set of instructions in combination with a computer system. *C.f. In re Wamerdam* - data structure stored in a computer memory, and *In re Lowery*, 32 USPQ2d 1031 (Fed. Cir. 1994) - data structure in a computer readable medium.

A claim to a computer readable medium encoded with functional descriptive material that can function with a computer to effect a practical application that results in a useful, concrete and tangible result (i.e. running an assembly line or executing a stock transaction) satisfies Section 101. Examples of Statutory Functional Descriptive Material are:

(a) A claimed computer-readable medium encoded with a functional data structure – this defines structural and functional relationships between the data structure and the hardware/software components. See *Wamerdam*.

(b) A claimed computer-readable medium encoded with a computer program - this defines structural and functional relationships between the computer program and the computer itself which allows the program's functionality to be realized provided that a useful, concrete and tangible result is realized. See U.S. Patent 5,710,578 to Beauregard et al. See MPEP §2106.01.

Examiner Note

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3-11, 33, 34, 40, 41, 45, 46, 52, 53, 58, 59, 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al., US 2001/0054008 A1 (hereafter referred to as “Miller”) in view of English, US 2003/0055723 A1 (hereafter referred to as “English”).

Referring to claims 3, 6, 7, 9 and 58. Miller teaches a method in a computing system for responding to a request for information about an item (see, e .g., Abstract), comprising:

- receiving a request for information about the item (Figs. 10 and 11 and ¶¶0171 and 0176);
- among a plurality of sellers, identifying those that are offering the item for sale and whose availability level for the selected item exceeds a predetermined availability threshold (¶¶0171, 0172, 0174, 0176 and 0178 – note the predetermined availability threshold is one, i.e. the item being in stock);
- selecting as the featured seller of the item the identified seller that is offering the selected item at the lowest price (¶¶0172 and 0178 – note the selection of the vendor can be based on price); and
- replying to the request for information with a web page containing a perceptible distinction with respect to a featured/distinguished seller and both (1) information describing the item including the price at which the featured/distinguished seller is offering the item, and (2) a control that, when activated, adds the item to a shopping cart so that the order will be placed from the seller when check out is performed the item from the featured seller or another seller (Fig. 5A, which shows a hyperlink to "Add this to my BuyList," and a perceptible distinction

Art Unit: 3625

with respect to a distinguished seller, OfficeMax who is in another, separate box, and ¶¶0151, 0171, 0173, 0176 and 0179 – note that the adding to the BuyList, i.e. shopping cart, next to each seller, including the featured seller and non-featured sellers, is for the intended use of placing the order from the seller when check out is performed).

While Miller teaches identifying sellers based on various criteria including identifying a distinguished seller, it does not explicitly teach identifying sellers that have a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold. English teaches a method of comparing, advertising and switching vendors including the known technique of selecting the vendors having the item for sale based on a score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold (¶0062 – note the score is the aggregate rating and the predetermined threshold is the current vendor aggregate rating). This known technique is applicable to the method of Miller as they both share characteristics and capabilities, namely they are directed to providing buyers with information.

One of ordinary skill in the art would have recognized that applying the known technique of English would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of English to the teachings of Miller would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, selecting a seller based on meeting a predetermined score threshold, as taught by English, would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow for customers to have more and better access to information

Art Unit: 3625

relating to an item in order for the customer to make better purchasing decisions, as suggested by Miller (¶0007).

Referring to claim 4. Miller in view of English teaches the method of claim 3 wherein the identifying and selecting is performed before the receiving (Miller, ¶0175 and English, ¶0074 – note that by having featured vendors being selected from those that have paid a fee, the identifying and selecting occurs before a request is received).

Referring to claim 5. Miller in view of English teaches the method of claim 3 wherein the identifying and selecting is performed at a uniform interval (Miller, ¶0179 – note the uniform interval is each time a request is received), and the most recently selected featured seller is used in replying to each of a plurality of received requests (Miller, ¶¶0175 and 0188 – note the most recently selected featured seller is determined by the paying seller and the most hits).

Referring to claims 8 and 11. All of the functional limitations in apparatus claims 8 and 11 are closely parallel to the limitations of method claims 3-6, analyzed above and are rejected on the same bases.

Referring to claim 10. Miller in view of English teaches the apparatus of claim 8 wherein the data structure further contain content specifying the display of one or more secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller (Miller, Fig. 5A - note the "BuyItNow" or "Add to

BuyList" controls are by each seller), but do not specifically teach that the control for the distinguished seller is displayed more prominently than the secondary controls. However, this difference is only found in the nonfunctional descriptive material and is not functionally involved in the functions of specifying the display of secondary controls recited. The specifying of the display of secondary controls would be performed in the same manner regardless of whether the controls were smaller or larger than others, particularly because it is simply a display. Thus, the non-functional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. *See In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowrey*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to specify the display of secondary controls regardless of the specific size of the control, because such information does not functionally relate to the displaying of controls function and also because the subjective interpretation of the displaying does not patentably distinguish the claimed invention. Furthermore, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, *see In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (Bd. Pat. App. & Inter. 1987). Thus the structural limitations of claim 10, including a data structure specifying the display of secondary controls are taught by Miller.

Referring to claims 33, 45 and 59. Miller in view of English further teaches wherein the featured seller is visually emphasized on a web page with respect to other sellers identified on the web page (Miller, Fig. 5A – note that "OfficeMax" as a local seller is visually identified in a separate box that emphasizes OfficeMax, and English, ¶0074 – note that by placing the featured vendor first, the featured seller is visually emphasized with respect to other sellers).

Referring to claims 34 and 46. Miller in view of English further teaches the method of claim 3 wherein the threshold is settable to different values (English, ¶0062 - note that vendors of varying ratings, i.e. scores, are displayed based on the current vendor rating, i.e. threshold, so that if a user has rated a vendor with 7.5, only vendors with scores the same as or above the threshold of 7.5 are shown, but if the user rated a vendor is 5.0, vendors with scores above the threshold of 5.9 would be shown, thus the threshold is settable to different values).

Referring to claims 40, 41, 52, 53, 66, and 67. Miller in view of English teaches the method and apparatus of claims 3, 7 and 58 further comprising providing a plurality of controls corresponding to at least a portion of the sellers, including those other than the featured seller, wherein activation of any of the plurality of controls will cause the item to be added to the user's shopping cart (Miller, Fig. 5A, which shows a hyperlink by at least a portion of the sellers to "Add this to my BuyList," i.e. a shopping cart, wherein clicking on the hyperlink will cause the item to be added to the user's shopping cart and ¶¶0151, 0171, 0173, 0176 and 0179).

Claims 35-39, 47-51 and 61-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of English, US 2003/0055723 A1 (hereafter referred to as “English”), as applied to claims 3, 7 and 58 above, and further in view of Callender et al., US 2002/0147657 A1, (hereafter referred to as “Callender”).

Referring to claim 35, 47 and 61. Miller/English teach the methods and apparatus of claims 3, 7 and 58 wherein the threshold is settable to different values (English, ¶0062), but do not teach the threshold being settable to a time period corresponding to a plurality of days. Callender teaches a method, system and program for determining item availability including the known technique of setting an availability threshold to a time period corresponding to a number of days (Fig. 7 and ¶¶0006, 0007, 0026 and 0027 – note that the time period is today, tomorrow, etc., i.e. the number of days can be one (today), two (tomorrow) etc., for determining availability). This known technique is applicable to the method of Miller/English as they all share characteristics and capabilities, namely they are all directed to providing information to buyers.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Callender to the teachings of Miller/English would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, setting the availability threshold to a time period corresponding to a plurality of days, as taught of Callender would have been recognized by those of ordinary skill in

Art Unit: 3625

the art as resulting in an improved method that would allow buyers to have a better idea whether the item is still likely to be in stock when they order it, as suggested by Callender (¶0004).

Referring to claims 36, 37, 48, 49, 62 and 63. Miller/English teach the methods and apparatus of claims 3, 7 and 58 providing for a display to a user who submitted the request an availability level of the featured seller and other sellers, but do not specifically teach displaying a numerical value corresponding to the availability level of the sellers. Callender teaches a method, system and program for determining item availability including the known technique of displaying the number of units available at each retailer, i.e. a numerical value corresponding to the availability level of the featured seller and other sellers (¶0026). This known technique is applicable to the method of Miller/English as they all share characteristics and capabilities, namely they are all directed to providing information to buyers.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Callender to the teachings of Miller/English would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, displaying a numerical value corresponding to the availability level of the featured seller and other sellers, as taught of Callender would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to have a better idea whether the item is still likely to be in stock when they order it, as suggested by Callender (¶0004).

Referring to claims 38, 50 and 64. Miller/English teach the methods and apparatus of claims 3, 7 and 58 providing for a display to a user who submitted the request an availability level of the featured seller and other sellers, but do not specifically teach displaying a numerical value corresponding to the availability level of the sellers, wherein the numerical value is settable to a value greater than one. Callender teaches a method, system and program for determining item availability including the known technique of displaying the number of units available at each retailer, i.e. a numerical value corresponding to the availability level of the featured seller and other sellers, wherein the numerical value is settable to a value greater than one by the retailer (§0026). This known technique is applicable to the method of Miller/English as they all share characteristics and capabilities, namely they are all directed to providing information to buyers.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Callender to the teachings of Miller/English would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, displaying a numerical value corresponding to the availability level of the featured seller and other sellers and settable to a value greater than one, as taught of Callender would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to have a better idea whether the item is still likely to be in stock when they order it, as suggested by Callender (§0004).

Referring to claims 39, 51 and 65. Miller/English teach the methods and apparatus of claims 3, 7 and 58 providing for a display to a user who submitted the request an availability level of the featured seller and other sellers, but do not specifically teach displaying a range corresponding to an availability level of at least one of the plurality of sellers, the range including a lower bound and an upper bound wherein the upper bound is different than the lower bound. Callender teaches a method, system and program for determining item availability including the known technique of displaying the number of units available at each retailer with a range of how many units would be available at what time, i.e. a range corresponding to an availability level within upper and lower bounds (§§ 0026-0027 – note that the range is that 2 units are available tomorrow, but x units are available today, the bounds which may be different). This known technique is applicable to the method of Miller/English as they all share characteristics and capabilities, namely they are all directed to providing information to buyers.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Callender to the teachings of Miller/English would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, displaying a range of availability levels within lower and upper bounds, as taught of Callender would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to have a better idea whether the item is still likely to be in stock when they order it, as suggested by Callender (§ 0004).

Claims 42, 54 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of English, US 2003/0055723 A1 (hereafter referred to as “English”), as applied to claims 3, 7 and 58 above, and further in view of Hartman et al., US 5,960,411 (hereafter referred to as “Hartman”).

Referring to claims 42, 54 and 68. Miller/English teach the methods and apparatus of claims 3, 7 and 58 further comprising providing a control to a user who submitted the request which when activated orders the item from the seller (Miller, Fig. 5A, "BuyItNow" which when activated, orders the item from the seller), but does not specifically teach that the ordering is performed without the user performing any subsequent interactions. Hartman teaches a method, system and program for ordering through “one-click” wherein items can be ordered by activating one control without the user performing any subsequent interactions (see, e.g., Abstract and col. 3, lines 31-66).

It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to include in the commerce method and apparatus of Miller/English the ability to order an item through activating a control without the user performing any subsequent interactions, as taught by Hartman, since the claimed invention is merely a combination of old elements, and in the combination each element would have performed the same function as it did separately, and one ordinary skill in the art would have recognized that results of the combination were predictable.

Claims 43, 44, 55-57, 69 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of English, US 2003/0055723 A1 (hereafter referred to as “English”), as applied to claims 3, 7 and 58 above, and further in view of Abdulhayoglu, US 7,296,053 B1 (hereafter referred to as “Abdulhayoglu”).

Referring to claims 43, 44, 55-57, 69 and 70. Miller in view of English teaches providing the user with information regarding the sellers which can be sorted by price, as discussed above, and where a highlighted seller can be selected based on various criteria such as shipping availability (Miller, ¶0178), but does not specifically teach displaying to the user shipping timing information for the item for the featured seller and at least one other seller. Abdulhayoglu teaches a method and apparatus for providing user information regarding products available through various merchants including the known technique of displaying shipping time information for each seller (col. 5, line 46 through col. 6, line 37 - note that shipping times are received from the merchants and displayed to the user in a desired format), and once the shipping times are retrieved, the sellers with the fastest shipping time can be selected and indicated as such, as taught by Miller (¶0178). This known technique is applicable to the method of Miller/English as they all share characteristics and capabilities, namely they are all directed to providing information to buyers.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Abdulhayoglu to the teachings of Miller/English would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such

Art Unit: 3625

references into similar methods. Further, obtaining and displaying shipping times, as taught of Abdulhayoglu would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to make a better comparison between vendors based on desirable criteria, as suggested by Abdulhayoglu (col. 6, lines 19-23).

Response to Amendment

Applicant's amendment, filed August 1, 2008, has been entered. Claims 3 and 7-11 have been amended; the examiner notes that claim 7 is listed as original, but has in fact been amended. Claims 33-70 have been newly added.

Response to Arguments

Applicant's arguments filed August 1, 2008, have been fully considered but they are not persuasive. In response to applicant's argument that amended claims 8-11 comply with 35 USC §101 because it recites a "computer readable medium storing" (Remarks, page 9), the examiner disagrees. Because the medium does not store instructions executable by a computer or processor, as suggested by the examiner in the office action mailed February 11, 2008 (page 3), they do not comply with 101, as also discussed above.

In response to applicant's argument that neither Miller nor English disclose "first identifying sellers based on a first set of criteria and then performing a down selection of the identified sellers by selecting as a featured seller an identified seller offering the item at the lowest price," (Remarks, pages 10-11), the examiner points out that these features) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As discussed above, Miller teaches among a plurality of sellers, identifying those that are offering the item for sale and whose availability level for the selected item exceeds a predetermined availability threshold and selecting as the featured seller of the item the identified seller that is offering the selected item at the lowest price. As also discussed above, English teaches the known technique of selecting the vendors having the item for sale based on a score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and it would be obvious to combine the two references.

In response to applicant's argument that Miller and English does not teach "a control that, when activated, adds the item to a shopping cart so that the order will be placed from the featured seller when check out is performed," because the user has to activate through a seller's purchase process when activating the link (Remarks, page 11), the examiner states that Miller teaches the limitations of the claims, i.e. "a control that, when activated, adds the item to a shopping cart so that the order will be placed from the featured seller when check out is performed," as discussed above, and that claims 3, 7, 8 and 58 do not prohibit the ordering to be through a seller's purchasing process.

In response to applicant's argument with respect to claim 4 that Miller and English do not teach the identifying and selecting of vendors occurring before a request is received (Remarks, pages 11-12), the examiner disagrees. English teaches that identifying and selecting vendors from those who have paid a fee occurs before a request is received. It is not clear to one of ordinary skill in the art how the identifying of sellers offering and having availability of "the

Art Unit: 3625

item" for which a request for information is received before a request is received, i.e. how the computing system would know for which item to check availability levels if a request has not yet been received.

In response to applicant's argument with respect to claim 5 that Miller and English do not teach identifying or selecting a uniform level (Remarks, page 12), the examiner disagrees.

Miller teaches identifying and selecting in response to receiving a user request as discussed above, with the uniform interval being each time the request is received.

Applicant's arguments with respect to claims 9 and 10 (Remarks, page 13 and 14) have been considered but are moot in view of the separate rejections above.

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Mourad et al., US 2005/0010494 A1, discloses a system and method for providing online shoppers with a comparison tool whereby prices and number of units available in stock are gathered from various retailers and displayed to the shopper (see, e.g., Abstract and pages 2-5).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMEE A. SHAH whose telephone number is (571)272-8116. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

October 10, 2008

/Amee A Shah/
Examiner, Art Unit 3625